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PART II



SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 3149/Legn. 1/2007/Leg. *Dated, Thiruvananthapuram, 6th September 2007.*

The Kerala State Commission for the Scheduled Castes and the Scheduled Tribes Bill—Authoritative Text together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. N. K. JAYAKUMAR,
Secretary,
Legislative Assembly.

Twelfth Kerala Legislative Assembly

Bill No. 125

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THE KERALA STATE COMMISSION FOR THE SCHEDULED CASTES
AND THE SCHEDULED TRIBES BILL, 2007

A

BILL

to constitute a Commission for the Scheduled Castes and the Scheduled Tribes in the State of Kerala and to provide for matters connected therewith or incidental thereto.

Preamble.—WHEREAS, it is expedient to constitute a Commission for the Scheduled Castes and the Scheduled Tribes in the State of Kerala and to provide for matters connected therewith or incidental thereto ;

BE it enacted in the Fifty-eighth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. *Short title and commencement.*—(1) This Act may be called the Kerala State Commission for the Scheduled Castes and the Scheduled Tribes Act, 2007.

(2) It shall come into force on such date, as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) “Commission” means the Kerala State Commission for the Scheduled Castes and the Scheduled Tribes constituted under section 3 ;

(b) “Government” means the Government of Kerala ;

(c) “Member” means a member of the Commission and includes the Chairperson ;

(d) “Prescribed” means prescribed by rules made under this Act ;

(e) “Scheduled Castes” shall have the meaning assigned to in clause (24) of Article 366 of the Constitution of India ;

(f) “Scheduled Tribes” shall have the meaning assigned to in clause (25) of Article 366 of the Constitution of India ;

CHAPTER II

STATE COMMISSION FOR THE SCHEDULED CASTES
AND THE SCHEDULED TRIBES

3. *Constitution of the Commission for the Scheduled Castes and the Scheduled Tribes.*—(1) The State Government shall, as soon as may be, after the commencement of this Act constitute a body to be known as the “Kerala State Commission for the Scheduled Castes and the Scheduled Tribes” to exercise the powers conferred on, and to perform the functions assigned to it under this Act.

(2) The Commission shall consist of the following members, namely :—

(a) a Chairperson, who has special knowledge in matters relating to the Scheduled Castes and the Scheduled Tribes, to be nominated by the Government ;

(b) two members who have special knowledge in matters relating to the Scheduled Castes and the Scheduled Tribes, to be nominated by the Government ;

(c) the Secretary to Government of the Scheduled Castes and the Scheduled Tribes Development Department of the Government, *ex-officio*, who shall be the Member-Secretary of the Commission.

4. *Term of Office and Conditions of service of the Chairperson and the Members.*—(1) Every member shall hold the office for a term of three years from the date he assumes office.

(2) The Chairperson or a member of the Commission may, at any time, by writing under his hand addressed to the Government, resign his office.

(3) The Government shall remove a person from the office of the Chairperson or of a member if that person,—

(a) become an undischarged insolvent ; or

(b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude; or

(c) becomes of unsound mind and stands so declared by a competent court; or

(d) refuses to act or becomes incapable of acting; or

(e) without obtaining leave of absence from the Commission, absents himself from three consecutive meetings of the Commission; or

(f) has, in the opinion of the Government, so abused the position of Chairperson or Member as to render that person's continuance in office is detrimental to the interest of the Scheduled Castes and the Scheduled Tribes; or the public interest:

Provided that no person shall be removed under this clause unless that person has been given an opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination within a period of three months.

(5) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be, as may be prescribed.

5. *Staff of the Commission.*—(1) The Government shall provide the Commission with such officers and employees, as may be required for the proper functioning of the Commission.

(2) The salary and allowances payable to, and the terms and conditions of services of the officers and other employees appointed for the purpose of the Commission shall be, such as may be prescribed.

6. *Salary, allowances and administrative expenses to be paid out of grants.*—The salary and allowances payable to the Chairperson and the members, and the administrative expenses, including salary, allowances and pensions payable to the officers and other employees referred to in section 5, shall be paid out of the grant referred to in sub-section (1) of section 12.

7. *Vacancies etc., not to invalidate proceedings of the Commission.*—No act or proceedings of the Commission shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

8. *Procedure to be regulated by the Commission.*—(1) The Commission shall meet as and when necessary, at such time and place as the Chairperson may think fit :

Provided that it shall meet at least once in three months.

(2) The Commission shall have power to regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other officer of the Commission duly authorised by the Member-Secretary in this behalf.

CHAPTER III

FUNCTIONS AND POWERS OF THE COMMISSION

9. *Functions of the Commission.*—The Commission shall have the following functions, namely:—

(a) To investigate and examine the working of various safeguards provided in the constitution of India or under any other law, for the time being in force, or under any order of the Government for the welfare and protection of the Scheduled Castes and the Scheduled Tribes in Kerala ;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and the Scheduled Tribes in Kerala and to take up such matters with the appropriate authorities ;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development in the State ;

(d) to make recommendations as to the measures that should be taken by the Government for the effective implementation of safeguards and other measures for the protection, welfare and socio economic development of the Scheduled Castes and the Scheduled Tribes and to make report to the Government annually and at such other time, as the Commission may deem fit ;

(e) to discharge such other functions in relation to the protection, welfare, development and advancement of the Scheduled Castes and the Scheduled Tribes, as may be prescribed :

Provided that if any matter specified in this section is dealt with by the National Commission for the Scheduled Castes and the Scheduled Tribes established under Article 338 of the Constitution of India, the State Commission for the Scheduled Castes and the Scheduled Tribes shall cease to have jurisdiction on such matter.

10. *Laying of Report.*—The State Government shall cause such reports referred to in clause (d) of section 9 to be laid before the Legislative Assembly explaining the action taken or proposed to be taken and the reasons, if any, for non-acceptance of the recommendations.

11. *Powers of the Commission.*—The Commission shall, while performing its functions under section, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely :—

(a) summoning and enforcing the attendance of any person from any part of the State and examining him on oath ;

- (b) requiring the discovery and production of any document ;
- (c) receiving evidence on affidavits ;
- (d) requisitioning any public record or copy thereof from any court or office ;
- (e) issuing commissions for the examination of witnesses and documents ; and
- (f) any other matter which may be prescribed.

CHAPTER IV

FINANCE ACCOUNTS AND AUDIT

12. *Grants by the Government* .—(1) The Government shall, after due appropriation made by the State Legislature by law in this behalf, pay to the commission, by way of grants, such sums of money, as the Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums, out of the grants, as it thinks fit, for performing the functions under this Act and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

13. *Accounts and Audit* .—(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed.

(2) The accounts of the Commission shall be audited annually by such auditor, as the Government may appoint in this behalf.

(3) All the accounts and other records should be made available to the auditor for the purpose of the Audit.

14. *Audit report to be laid before the Legislature* .—The Government shall cause the audit reports to be laid, as soon as may be after they are received, before the Legislative Assembly.

CHAPTER V

MISCELLANEOUS

15. *Chairperson, Members and Employees of the Commission to be Public Servants* .—The Chairperson, members and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

16. *Power to make rules* .—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act, either prospectively or retrospectively.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :—

(a) salary and allowances payable to, and the other terms and conditions of service of the chairperson and members under sub-section (5) of section 4 and of officers and other employees under sub-section (2) of section 5;

(b) the form in which the annual report shall be prepared under clause (d) of section 9;

(c) the form, in which the annual statement of accounts shall be maintained under sub-section (1) of section 13; and

(d) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

17. *Power to remove difficulties* .—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may by order, published in the Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient, for removing the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be, after it is made, be laid before the Legislative Assembly.

18. *Repeal and Saving* .—(1) The Kerala State Commission for the Scheduled Castes and the Scheduled Tribes Ordinance, 2007 (56 of 2007) is hereby repealed.

(2) Notwithstanding such repeal anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The National Commission for the Scheduled Castes and the Scheduled Tribes on their visit to Kerala during September, 2000, had recommended the State Government to set up a State Level Commission for the Scheduled Castes and the Scheduled Tribes on the lines of the National Commission. Moreover, the submission made by the State Government to the effect that the constitution of a State Commission for the Scheduled Castes and the Scheduled Tribes in Kerala, is under the active consideration of the Government, has been taken note of by the Honourable High Court of Kerala, in its judgement pronounced on 25-9-2001 in O.P. No.12743/2001. It was, therefore, decided by the State Government to constitute a State Commission for the Scheduled Castes and the Scheduled Tribes, not in conflict with the powers of the National Commission, by effectively discharging its legislative power to enact a legislation for the purpose, on the lines of the Karnataka State Commission for the Scheduled Castes and the Scheduled Tribes Act, 2002.

2. Accordingly, though the Kerala State Commission for the Scheduled Castes and the Scheduled Tribes Bill, 2004 was published by the Eleventh Kerala Legislative Assembly as Bill number 240, the same could not be introduced in the Legislative Assembly. As the Legislative Assembly of the State was not in session and Government was satisfied that the said legislation has to be done immediately, the Kerala State Commission for the Scheduled Castes and the Scheduled Tribes Ordinance, 2006 (5 of 2006) was promulgated by the Governor on the 6th day of January, 2006 and the same was published in the Kerala Gazette Extraordinary No. 35 dated the 6th January, 2006.

3. Since, a Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its sessions which commenced on the 3rd day of February, 2006 and ended on the 21st day of February, 2006 and which commenced on the 14th day of March, 2006 and ended on the 15th day of March, 2006, the Governor promulgated the Kerala State Commission for the Scheduled Castes and the Scheduled Tribes Ordinance, 2006 (25 of 2006) on the 17th day of March, 2006 and was published in the Kerala Gazette Extraordinary No. 601 dated the 17th March, 2006.

4. A Bill to replace the Ordinance No. 25 of 2006, by an Act of the Kerala State Legislature could not be introduced in, and passed by the Twelfth Kerala Legislative Assembly during its session which commenced on the 24th day of May, 2006 and ended on the 30th day of June, 2006. Therefore the Kerala State Commission for the Scheduled Castes and the Scheduled Tribes Ordinance, 2006 (40 of 2006) was promulgated by the Governor on the 5th day of July 2006 and the same was published in the Kerala Gazette Extraordinary No. 1134 dated the 5th July, 2006.

5. A Bill to replace Ordinance No. 40 of 2006 by an Act of the State Legislature could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 18th day of September, 2006 and ended on 26th day of October, 2006. Therefore the Governor has promulgated the Kerala State Commission for Scheduled Castes and the Scheduled Tribes Ordinance, 2006 (50 of 2006) on the 30th day of October, 2006 and published in the Kerala Gazette Extraordinary No. 1714 dated the 30th October, 2006.

6. Since a Bill to replace Ordinance No. 50 of 2006 by an Act of the State Legislature could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 27th day of December, 2006 and ended on the 29th day of the December, 2006, the Governor promulgated the Kerala State Commission for the Scheduled Castes and the Scheduled Tribes Ordinance, 2007 (9 of 2007) on the 4th day of February, 2007 and published in the Kerala Gazette Extraordinary No. 207 on the 5th February 2007.

7. A Bill to replace Ordinance No. 9 of 2007 by, an Act of State Legislature could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 2nd day of March, 2007 and ended on the 29th day of March, 2007 the Governor promulgated the Kerala State Commission for the Scheduled Castes and the Scheduled Tribes Ordinance, 2007 (35 of 2007) on the 30th day of March, 2007 and published in the Kerala Gazette Extraordinary No. 640 on the 2nd April, 2007.

8. A Bill to replace Ordinance No. 35 of 2007 by an Act of State Legislature could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 19th day of June 2007 and ended on the 26th day of July 2007. Therefore the Governor promulgated the Kerala State Commission for the Scheduled Castes and the Scheduled Tribes Ordinance, 2007 (56 of 2007) on the 30th day of July 2007 and Published in the Kerala Gazette Extraordinary No. 1416 on the 30th July, 2007.

9. The Bill seeks to replace the said Ordinance by an Act of legislature.

FINANCIAL MEMORANDUM

Sub-clause (5) of clause 4 of the Bill provides that the salary and allowances payable to the Chairperson and members shall be such, as may be prescribed. Sub-clause (2) of clause 5 of the Bill provides that the salary and allowances payable to the officers and other employees appointed for the Commission shall be such, as may be prescribed. As per clause 6, the salary and allowances payable to the Chairperson and members and the administration expenses, including salary, allowances and pension payable to the officers and other employees referred to in clause 5 shall be paid out of the grants referred to in sub-clause (1) of clause 12. Sub-clause (2) of clause 13 of the Bill provides that the accounts of the Commission shall be audited annually by such auditor, as the Government may appoint in this behalf.

2. When the Bill is enacted and brought into operation, Government shall have to provide funds to the Commission for meeting the above expenditure of the Commission, as may be necessary for the efficient functioning of the Commission. The anticipated minimum expenditure in the recurring and non-recurring nature will be as follows:

Recurring expenditure	:	Rs. 25,97,241
No-recurring expenditure	:	<u>Rs. 10,24,000</u>
Total	:	<u>Rs. 36,21,241</u>
Say	:	Rs. 37,00,000

3. In addition to the above expenditure the salary and allowances of the Chairperson and three members will also come under recurring expenditure.

MEMORANDUM REGARDING DELIGATED LEGISLATION

Sub-clause (5) of clause 4 and sub-clause (2) of clause 5 of the Bill seeks to empower the Government to prescribe the salary and allowances payable to, and the other terms and conditions of service of the Chairperson, Members and Officers and other employees of the Commission.

2. Item (f) of clause 11 of the Bill seeks to empower the Government to prescribe any other matter on which the Commission shall have the power of a civil court.

3. Sub-clause (1) of clause 13 of the Bill seeks to empower Government to prescribe the form in which the Commission shall prepare the annual statement of accounts.

4. Clause 16 of the Bill seeks to empower Government to make rules for carrying out the provisions of the Act.

5. Clause 17 of the Bill seeks to empower the Government to issue orders not inconsistent with the provisions of the Act, for the purpose of removing any difficulty in giving effect to the provisions of the Act.

6. The matters in respect of which rules may be made or orders may be issued are matters of procedure or of details, which are of routine or administrative in nature. Further, the rules and orders as such are subject to the scrutiny by the Legislative Assembly. Therefore the delegation of legislative power is, of a normal character.

A. K. BALAN
